

1 since approximately October of 2011. Plaintiff has been treating with Dr. DeShazo for over 15
2 years as her regular physician.

3 12. These medications were specifically prescribed by Plaintiff's doctor to treat her
4 conditions for nausea, vomiting and gastroenteritis.

5 13. After her drug screening came back positive, Killian told Defendant of the physical
6 impairments mentioned above and the need for the medications mentioned above to accommodate
7 these ailments.

8 14. At no time did anyone from Wal-Mart attempt to contact Dr. DeShazo to verify that
9 these were prescribed medications to treat physical impairments Plaintiff suffered from or to
10 otherwise interact with Killian or her treating physician on these matters.

11 15. Following her termination Killian has been unable to find comparable work and in
12 addition to continuing to suffer from nausea, vomiting and gastroenteritis, she now also suffers
13 from prolonged post-traumatic stress, generalized anxiety disorder and depressive disorder from
14 being terminated from her employment at Wal-Mart.

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16 **FIRST CAUSE OF ACTION**

17 **(For Disability Discrimination and Failure to**

18 **Accommodate in Violation of the ADA)**

19 16. Plaintiff Killian incorporates the allegations set forth in paragraphs 1 through 15,
20 inclusive, as if fully set forth herein.

21 17. Plaintiff was diagnosed with nausea, vomiting and gastroenteritis by her doctor
22 Gary DeShazo, D.O. These ailments substantially limited her in the major life activities of eating
23 and digesting food, digestive system functions and bowel and bladder functions. In addition these
24 ailments substantially limited Plaintiff in her ability to work, thus qualifying Killian as being
25 disabled under the ADA.

26 18. To accommodate these disabilities Plaintiff's doctor prescribed two medications to
27 treat Killian's disabilities.
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1 19. On July 2, 2015, Killian was abruptly terminated from Wal-Mart for a failed drug
2 screening which was caused by having one or both of these two prescribed medications in her
3 system.

4 20. Had Defendant interacted with Plaintiff or her doctor they would have discovered
5 that the medications that caused the positive drug screening were medications prescribed to Killian
6 to accommodate her disabilities.

7 22. Plaintiff believes and will prove at trial that Wal-Mart terminated Plaintiff's
8 employment in violation of her rights under the ADA, for among other things, taking prescribed
9 medications to accommodate her disabilities.

10 23. As a direct and proximate result of Defendant violating Plaintiff's rights under the
11 ADA, Plaintiff has suffered, overall economic losses in earnings, bonuses, job benefits and
12 expenses, in an amount to be proven at trial which exceeds the minimum jurisdictional limits of
13 this Court.

14 24. As a direct and proximate result of Defendant violating Plaintiff's rights under the
15 ADA, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress,
16 nervousness, tension, anxiety, change in sleep patterns, depression, inconvenience and loss of
17 enjoyment of life and other pecuniary losses, the extent of which is not fully known at this time,
18 for which Plaintiff seeks damages in an amount in excess of the minimum jurisdictional limits of
19 the Court, also to be proven at the time of trial.

20 25. In acting as they did, Defendant knowingly, willfully, and intentionally acted in
21 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to
22 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a
23 sum according to proof at trial.

24 26. Plaintiff claims the damages alleged herein, together with prejudgment interest as
25 provided by law, in a sum according to proof at trial.

26 27. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of
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her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Killian demands judgment against Defendant as follows:

1. Declaring that the acts and practices complained of here are a violation of the ADA;
2. Enjoining and permanently restraining the violations by Defendant of the ADA;
3. For back pay and front pay for overall economic losses in earnings, bonuses, job benefits and expenses, according to proof at time of trial;
4. For compensatory damages for mental and emotional distress, worry, indignity, mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;
5. For punitive damages;
6. For attorney's fees and costs in an amount determined by the court to be reasonable;
7. For pre-judgment interest on all damages; and
8. For any other and further relief that the Court considers proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

DATED: 2/14/2016

LAW OFFICES OF MICHAEL P. BALABAN

BY: /s/ Michael P. Balaban
Michael P. Balaban
LAW OFFICES OF MICHAEL P. BALABAN
10726 Del Rudini Street
Las Vegas, NV 89141

EXHIBIT

A

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Christina Killian
3424 Miramar Dr.
Las Vegas, NV 89108

From: Las Vegas Local Office
333 Las Vegas Blvd South
Suite-8112
Las Vegas, NV 89101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

487-2015-01463

Brian Gorecki,
Investigator

(702) 388-5099

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.



The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

NOV 18 2015

Enclosures(s)

Richard T. Burgamy,
Local Office Director

(Date Mailed)

CC: Marisa Crawford
R Counsel
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c/o LITTLER MENDELSON, P.C.
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